

SOUTHERN ENVIRONMENTAL LAW CENTER

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 605
ATLANTA, GA 30303-1800

Telephone 404-521-9900
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Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

April 1, 2010

VIA U.S. Mail and Facsimile: (404) 562-8054

U.S. Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Bldg, 61 Forsyth St., S.W.,
9th Floor
Atlanta, GA 30303-8960

CONTROL NO	4-FOI-00430-10
RESPONSE DUE:	4/30/10
SEARCHED	Other
INDEXED	US
SERIALIZED	CC EAD
FILED	OTHER
Special Instructions: Fee Waiver request	

Re: Freedom of Information Act Request - Development of Numeric Nutrient Criteria for Alabama Waters

Dear Madam or Sir:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC") requests all documents in the possession or control of the U.S. Environmental Protection Agency (the "EPA") that relate to the development by EPA or the Alabama Department of Environmental Management of numeric water quality standards for nutrients in waters in the state of Alabama, including but not limited to the following:

- Any analysis, assessment, report, and/or document prepared by EPA regarding development of numeric nutrient criteria standards in Alabama;
- Any correspondence or communications, including any attachments thereto, between EPA, the Army Corps of Engineers, Alabama Department of Environmental Management, and any other federal or state agency, company, or person regarding the development of those standards;
- All analyses, assessments, reports, and/or documents submitted to or in the possession of the EPA that is related to the development of those standards;
- All other documents related to the development of nutrient criteria standards for Alabama.

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For the purposes of this request, the term "document" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the EPA.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. See 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. See 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D. Colo. 1994); Ertlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers...." Pederson, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 20 years of experience disseminating public information regarding Corps regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. For example, SELC frequently publishes reports and issues press releases regarding its projects. (See http://www.southernenvironment.org/Newsroom/res_news.shtml). Lawyers at SELC are interviewed by the media to explain their work and its significance. (See, e.g., Bo Petersen, "Pine Hill Site of Wetlands Battle, Judge Halts Landing Field," The Post and Courier (Charleston, SC), Feb. 18, 2010, <http://www.postandcourier.com/news/2010/feb/18/pine-hill-site-of-wetlands-battle/>). SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See, e.g., "Clean Air for the Birmingham Area," http://www.southernenvironment.org/uploads/publications/BAR_0909_Final.pdf). SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

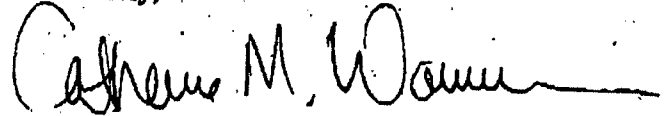
All of this information is available for free to any interested member of the public. SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast. A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the

government and of potential or proposed major policy incentives. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester.

Should SELC's request for reduced or waived fees be denied, and fees are expected to be minimal, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$25. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to call me at 404-521-9900. Thank you for your prompt attention to this matter. We look forward to receiving the public records requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine M. Wannamaker", with a long horizontal flourish extending to the right.

Catherine M. Wannamaker
Staff Attorney

CMW/gnd



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
WASHINGTON, DC 20460

April 08, 2010

Ms. Catherine Wannamaker
Southern Environmental Law Center
127 Peachtree Street, Suite 605
Atlanta, GA , 30303-1800
United States

RE: Request No. 04-FOI-00430-10

Dear Ms. Wannamaker:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to all documents that relate to the development by EPA or the Alabama Department of Environmental Management of numeric water quality standards for nutrients in water in the state of Alabama and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. These factors are summarized below.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to hq.foia@epa.gov, or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at hq.foia@epa.gov, or call 202-566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 506
ATLANTA, GA 30303-1840

Facsimile 404-521-9909

April 15, 2010

Via Facsimile (202-566-2147)

Mr. Larry F. Gottesman
National FOIA Officer
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Fee Waiver Justification for Request No. 04-FOI-00430-10

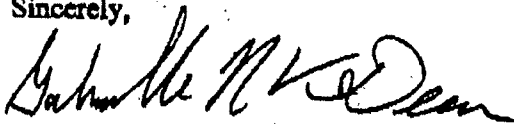
Dear Mr. Gottesman:

I am writing on behalf of Catherine Wannamaker to respectfully request an extension of time to respond to your April 8th letter in the above-referenced matter.

Ms. Wannamaker has been travelling on business since your request last week and will be traveling again most of the upcoming week. As a result, she would like to ask for a new deadline of April 23rd in order to properly address the justification requirements.

Thank you for your cooperation in this matter. If you have any questions or concerns, please do not hesitate to contact me at (404) 521-9900.

Sincerely,



Gabrielle Dean
Legal Assistant to Catherine Wannamaker

/gnd

Southern Environmental Law Center Fee Waiver Justification

Lori Bice

to:

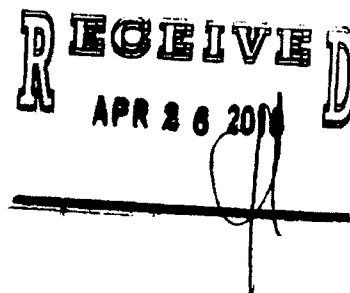
FOIA HQ

04/23/2010 12:28 PM

Cc:

Catherine Wannamaker

Show Details



Mr. Gottesman,

Please find attached Southern Environmental Law Center's fee waiver justification in regards to Request No. 04-FOI-00430-10. We will also be submitting this via fax.

Thank you,

Lori Bice
Administrative Assistant
Southern Environmental Law Center
Georgia/Alabama Office
The Candler Building
127 Peachtree St. Suite 605
Atlanta, GA 30303-1840
Phone: (404) 521-9900
Fax: (404) 521-9909
<http://www.SouthernEnvironment.org>

SOUTHERN ENVIRONMENTAL LAW CENTER

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 605
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Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

April 23, 2010

Larry F. Gottesman
National FOIA Officer
United States EPA
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460

Re: Request No. 04-FOI-00430-10

Dear Mr. Gottesman:

This letter is in response to your letter of April 8, 2010, requesting additional information to justify a fee waiver in connection with the Southern Environmental Law Center's (SELC) request for materials seeking records related to all documents that relate to the development by EPA or the Alabama Department of Environmental Management ("ADEM") of numeric water quality standards for nutrients in waters of the state of Alabama. You asked that we provide additional information on the six factors that EPA considers in determining whether to grant a fee waiver. Please see the explanation below of how SELC's request satisfies these factors.

A. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

SELC has clearly requested records that concern identifiable operations and activities of the government. The requested records pertain to EPA and ADEM's development of a numeric water quality standard for nutrients in Alabama waters, an unquestionable government activity that has been ongoing for the last ten years since EPA mandated that the states should begin developing these standards. The effect of these federal actions on the environment is a controversial matter of great public concern.

B. The requested materials are "likely to contribute" to an understanding of specific government operations or activities because the releasable material is meaningfully informative in relation to the subject matter of the request.

The requested material relates to SELC's ongoing work regarding water quality in Alabama, and EPA's oversight of ADEM's administration of the Clean Water Act ("CWA"). More specifically, the requested documents regarding the development of a numeric standard for

Mr. Larry Gottesman
April 23, 2010
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nutrients in Alabama are meaningfully informative to ADEM's responsibilities to administer the CWA and protect water quality in Alabama, and how EPA oversees that process. EPA required the states to develop numeric nutrient standards many years ago, and the requested records are informative as to whether ADEM has been progressing towards compliance with this mandate.

- C. The requested materials will contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons; SELC has no commercial interest in the requested material and thus the public interest in disclosure outweighs any commercial interest.

The disclosure of the requested materials will significantly contribute to the public's understanding of water quality issues in Alabama - as opposed to the understanding of the requester or a narrow segment of interested persons - because SELC will communicate the information to its client nonprofit organizations, its supporters, and to the public at large. Information gleaned from the requested records will be shared with other non-profit entities and will also be disseminated to the public at large as appropriate to further the public-service mission of the SELC, through SELC's website and newsletters, editorials in local newspapers, comments at public meetings, and written comments regarding government actions. Any information obtained from EPA will be used to further inform the public about ADEM's regulation of nutrient loading in Alabama, a matter of public concern and controversy. Accordingly, the disclosure will contribute significantly to public understanding of these government operations or activities.

Moreover, SELC, as a nonprofit organization, has no commercial interest in this material. SELC is a 501(c)(3) non-profit organization with over 20 years of experience disseminating public information regarding EPA regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). Thus, the public interest in disclosure clearly outweighs any commercial interest.

- D. The requested material contributes significantly to public understanding of government operations or activities.

The subject matter of the requested records concerns identifiable operations and activities of the government - the evaluation by EPA and ADEM of a numeric standard for nutrient pollution in Alabama. Numerous citizen groups have complained about nutrient loading in waters around the Southeast, including Alabama, and have been following EPA's development of a numeric nutrient standard in Florida. Thus, this is clearly an environmental issue of public concern. Disclosure of the requested material will contribute significantly to the public's understanding of EPA and ADEM's evaluation of nutrient pollution and a numeric standard in Alabama. The requested records will reveal what information the EPA considered in reviewing this permit, and what information informed the EPA's comments on this permit.

In sum, based on the factors discussed above, in addition to the high level of public interest in the controversial subject matter of the FOIA request, we renew our request for a public interest fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 49 C.F.R. § 7.44(e).

Mr. Larry Gottesman
April 23, 2010
Page 3

Thank for your time and attention to this matter. Should you have any questions, please feel free to contact me at (404) 521-9900.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine M. Wannamaker", followed by a long horizontal line extending to the right.

Catherine M. Wannamaker
Staff Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 27, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Ms. Catherine M. Wannamaker
Southern Environmental Law Center
The Candler Building
127 Peachtree Street, Suite 605
Atlanta, GA 30303-1800

RE: Request Number 04-FOI-00430-10


Dear Ms. Wannamaker:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request seeking all documents that relate to the development by EPA or the Alabama Department of Environmental Management of numeric water quality standards for nutrients in water in the state of Alabama.

We have reviewed your fee waiver justification and based on the information you provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records. EPA's Region 4 office in Atlanta, GA will be responding to your information request.

If you have any questions concerning this please contact me at (202) 566-1667.

Sincerely,


Larry F. Gottesman
National FOIA Officer